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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 16, 2002

JOINT APPLICATIONS OF

GROUNDHOG MTN. PROPERTY
OWNERS, INC.

CASE NO. PUE-1999-00814

and

GROUNDHOG MTN. WATER &
SEWER COMPANY, INC.

For authority to acquire
and to dispose of utility
assets
pursuant to the Transfers
Act and for certificates
of public convenience and
necessity pursuant to
§§ 56-265.2 and 56-265.3

FINAL ORDER

On December 12, 2000, Groundhog Mtn. Property Owners, Inc. ("GMPO"), and Groundhog Mtn. Water & Sewer Company, Inc. ("GMW&S") (collectively, "Applicants"), completed their Application, which initially was filed on December 13, 1999, and subsequently amended on March 14, 2000. Pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"), Applicants request authority for GMPO to dispose of, and for GMW&S to acquire, GMPO's water and sewer facility assets pursuant to a license agreement between the parties. The Applicants also request, pursuant to §§ 56-265.2

and 56-265.3 of the Code, certificates of public convenience and necessity for GMW&S to acquire the above-referenced assets and to provide water and sewer service to its requested service territories. Finally, the Applicants request approval of GMW&S's proposed rates, rules, and regulations of service.

On January 9, 2001, the Commission issued an Order docketing this case, directing publication of notice of the Application, and providing interested persons an opportunity to comment on the Application and request a hearing. On March 19, 2001, Doe Run Properties, LLC ("DRP"), and The Doe Run at Groundhog Mountain, Inc. ("DRAGM") (collectively, "Protestants"), filed comments, objections, and requests for hearing. DRAGM is a tenant of DRP and is the operator of The Doe Run Lodge ("Lodge"). On April 2, 2001, the Applicants filed a response, which addressed each of the objections raised by the Protestants.

On April 11, 2001, the Commission entered an Order for Notice and Hearing, in which it appointed a Hearing Examiner to hear the case, scheduled a public hearing, established a procedural schedule for prefiling testimony and exhibits, and required the Applicants to provide notice of the public hearing. By rulings entered on April 18 and May 8, 2001, the Hearing Examiner granted Applicants' request to conduct the hearing in the City of Roanoke, Virginia, and directed the

Applicants to modify the notice set forth in the Commission's Order for Notice and Hearing to reflect the change in the location of the public hearing.

On July 17, 2001, the public hearing was convened at the Roanoke City Council Chamber. Wilburn C. Dibling, Jr., Esquire, appeared as counsel for the Applicants. Lisa S. Goodwin, Esquire, appeared as counsel for the Protestants. Marta B. Curtis, Esquire, appeared as counsel for the Commission's Divisions of Energy Regulation and Public Utility Accounting. One public witness testified at the hearing.

On January 9, 2002, the Examiner issued the Report of Michael D. Thomas, Hearing Examiner, and on January 10 and 11, 2002, the Examiner issued supplemental reports (collectively, "Hearing Examiner's Report"). On January 29, 2002, Applicants filed comments in support of the Hearing Examiner's Report. On January 30, 2002, Protestants filed objections to the Hearing Examiner's Report.

NOW THE COMMISSION, having considered the record, the pleadings, the Hearing Examiner's Report, the comments and objections filed in response thereto, and the applicable law, is of the opinion and finds as follows.

We approve the transfer of water and sewer utility assets from GMPO to GMW&S pursuant to the terms of the license agreement dated December 4, 2000, in accordance with the

Utility Transfers Act. We find that such transfer will not jeopardize or impair the provision of adequate service to the public at just and reasonable rates. We also find, pursuant to § 56-265.2 of the Code, that the public convenience and necessity requires us to issue GMW&S a certificate to acquire the water and sewer utility facilities from GMPO.

We find that it is in the public interest for GMW&S to provide sewer service in its requested territory and grant GMW&S a certificate of public convenience and necessity, pursuant to § 56-265.3 of the Code, to operate a sewer utility in the service territory it has requested. We also find that it is in the public interest for GMW&S to provide water service in its requested territory. We grant GMW&S a certificate of public convenience and necessity, pursuant to § 56-265.3, to operate a water utility in the service territory it has requested, conditioned upon GMW&S receiving an operating permit from the Virginia Department of Health for its new well and storage tank within six months from the date of this order. Finally, we adopt the rates, rules, and regulations of water and sewer service recommended by the Hearing Examiner, which do not appear unjust and unreasonable.

The Hearing Examiner's Report thoroughly sets forth the evidence and the issues in this case. We will not review here every recommendation, rationale, and objection. We agree with

the Examiner's recommended results. We also will comment on certain objections raised by the Protestants.

Protestants object to the Examiner's treatment of the 1999 special assessment, arguing that GMW&S's revenue requirement should not be based on that assessment. Protestants' objection is not well founded. It is clear from the record in this case that GMW&S's revenue requirement is not based on the 1999 special assessment. The 1999 special assessment is treated as a deduction from rate base. The recommended revenue requirement, however, does not include a component for a return on rate base. As a result, the rate base treatment of the special assessment does not alter the revenue requirement. Moreover, if the revenue requirement in this case included a component for return on rate base, then the 1999 special assessment would *reduce* the revenue requirement by lowering rate base. In any respect, the 1999 special assessment does not impact the recommended revenue requirement in this proceeding.

Protestants also assert that the Hearing Examiner erred by not applying an abandonment analysis in this case. In this regard, we have analyzed whether it is in the public interest for the Applicants to exclude Protestants from the requested water service territory and to cease water service to the Protestants. We find that: (1) the Applicants have no legal

right to use Protestants' water facilities; (2) the Applicants do not own or control water facilities necessary to provide water service to the Protestants; (3) under Applicants' proposal, GMPO's homeowners will have complete control over their water system; (4) GMPO and the Lodge have diametrically opposed views on the proper rate design for water service; (5) Protestants will suffer no financial hardship or lack of water supply by being excluded from Applicants' service territory; and (6) Protestants will not be prejudiced by Applicants' request.

We conclude that the proposed territory, which effectuates a discontinuance of service to the Protestants, is in the public interest. Accordingly, we find that it is in the public interest for GMPO to abandon its prior water service to the Protestants. Moreover, an abandonment analysis as requested by the Protestants reaches the same result. Protestants contend that - under a separate abandonment analysis - the Commission should reject Applicants' requested territory due to Protestants' financial hardship and inadequate water supply. As noted above, however, we agree with the Examiner's finding that Protestants will suffer no financial hardship or lack of water supply as a result of being excluded from the Applicants' service territory.

Finally, we disagree with the Protestants' assertion that § 56-234 of the Code requires the Applicants to include the Protestants within the certificated territory. Section 56-234 does not require this Commission to expand existing, or proposed, public utility territories to encompass customers outside such territories.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-89 and 56-90 of the Code of Virginia, GMPO is hereby granted authority to transfer water and sewer utility assets to GMW&S pursuant to the terms of the license agreement dated December 4, 2000.

(2) GMW&S is hereby authorized to acquire from GMPO water and sewer utility facilities pursuant to the terms of the license agreement dated December 4, 2000.

(3) Applicants shall submit a Report of Action to the Commission's Director of Public Utility Accounting no later than thirty (30) days, subject to extension by the Director of Public Utility Accounting, after the transfer of the utility assets from GMPO to GMW&S, notifying the Commission that such transfer has taken place.

(4) GMW&S is hereby issued Certificate No. W-300 to provide sewer service in its requested service territory.

(5) GMW&S is hereby issued Certificate No. S-86 to provide water service in its requested service territory,

conditioned upon GMW&S receiving an operating permit from the Virginia Department of Health for its new well and storage tank within six months from the date of this order.

(6) GMW&S shall submit written notification to the Commission's Division of Energy Regulation no later than thirty (30) days after receiving an operating permit from the Virginia Department of Health for its new well and storage tank.

(7) The rates, rules, and regulations for the provision of water and sewer services recommended by the Hearing Examiner are hereby approved. The water rates approved herein currently are in effect. The sewer rate and escrow accounting approved herein shall be effective as of GMW&S's first billing cycle following the date of this order.

(8) GMW&S shall within sixty (60) days from the date of this Order submit to the Commission's Division of Energy Regulation a tariff incorporating the rates, rules, and regulations approved herein.

(9) The book and record keeping requirements recommended by the Hearing Examiner, including the establishment of an escrow account, are hereby adopted.

(10) This matter is hereby dismissed.